



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 11, 1993

Mr. James Eidson
Criminal District Attorney
Taylor County Courthouse
Abilene, Texas 79602-1577

OR93-310

Dear Mr. Eidson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19926.

The Taylor County District Attorney's Office received a request for the investigative files pertaining to the City of Abilene's purchase of land for a library ("librarygate"). You received several different requests from the media; however, the requests basically ask for all records of the criminal investigation of librarygate. You state that the investigation is completed and a grand jury "no-billed" on all allegations of criminal wrongdoing arising out of the land purchase and subsequent investigation.

You contend that sections 3(a)(1) and 3(a)(8) except the records from disclosure. Section 3(a)(1) excepts from disclosure "information deemed confidential by law, either statutory, constitutional or by judicial decision." The only records in this file confidential by law under section 3(a)(1) are those pertaining to the polygraph examinations and results which are confidential under section 19A(b) of article 4413(29cc), V.T.C.S. See Open Records Decision No. 430 (1985). The requestors are not included in the list of persons or agencies to which the polygraph information may be disclosed. See V.T.C.S. art. 4413(29cc) § 19A(c). We have marked the documents that contain information about the polygraph examinations conducted as part of the investigation. You may withhold the polygraph information pursuant to section 19A of article 4412(29cc).

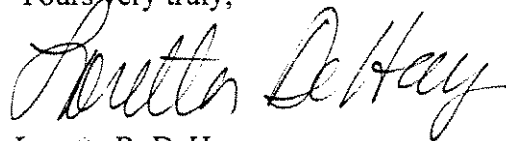
You also contend that section 3(a)(8) excepts the information because

[d]isclosure of this file would reveal investigative techniques and sensitive matters closely intertwined with city government. . . . Those questioned will be reluctant to respond for fear of reprisal, embarrassment, or retaliation if they are aware that their responses may ultimately be publicly disclosed.

Information in an inactive criminal investigation file may only be withheld if disclosure will unduly interfere with law enforcement or prosecution. Open Records Decision Nos. 444 (1986), 397 (1983). Moreover, when future prosecution is remote, there is no basis on which to conclude that the information is excepted by section 3(a)(8). Open Records Decision No. 582 (1990) at 3. Your primary concern is that release of the investigation records would somehow jeopardize city government. This concern is not sufficient to trigger the protection of section 3(a)(8). In addition, you state that the grand jury "no-billed" on all allegations of criminal wrongdoing; therefore, the prospect of future prosecution is exceedingly remote. Finally, you are concerned that people, driven by fear of retaliation or embarrassment, will be reluctant to respond to inquiries in future investigations of this nature if they are aware that their responses may be publicly disclosed. Although your concerns about future investigations are legitimate, they too are not sufficient to invoke section 3(a)(8), especially when the criminal case is closed, as in this case. For these reasons, you must disclose the requested information, except for any information that relates to the polygraph examinations and results which we have marked accordingly.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Opinion Committee

LRD/JET/le

Ref.: ID# 19926

Enclosures: marked documents

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